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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,701	12/05/2003	Tawei Tsao		9993
29745	7590	09/09/2005		
JOE NIEH 18760 E. AMAR ROAD #204 WALNUT, CA 91789			EXAMINER WALCZAK, DAVID J	
			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/728,701

Applicant(s)

TSAO ET AL.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-21 is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In regard to claims 1 and 10, The newly added limitation of the enclosed opening means/tube being affixed to the housing is considered to be new matter, i.e., the specification has not defined the term "affixed" with respect to the enclosed opening means and the housing.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 remain rejected under 35 U.S.C. 102(b) as being anticipated by Prussin et al. (hereinafter Prussin). In regard to claim 1, Prussin discloses an enclosed opening means 24" (see Figure 6) for an elongated tubular housing 12" having a sealed end (not shown) and an open end 18" with a fluid disposed near the sealed end of the tubular housing 12" (the fluid being in compartment 38") comprised of a cylinder with an

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open end and a sealed end 72 wherein the cylinder has a sealing diameter therearound that is approximately equal to the inside diameter of the tubular housing 12" to provide a seal therebetween and wherein an outside diameter at the sealed end 72 is smaller than the inside diameter of the tubular housing and a fracture line 74 is provided near the sealed end 72 on the other side of the sealing diameter where the fluid is disposed and wherein the enclosed opening means 24" is "affixed" in the tubular housing 12" (in as much as the Applicant has defined the term "affixed", the enclosed opening means shown in the Prussin reference is considered to be affixed to the housing, i.e., the enclosed opening means cannot readily be removed from the housing and is thereby considered affixed to the housing) with the open end towards the fluid (in compartment 38") to thereby seal the fluid within the tubular housing. It is noted that the tubular housing, opening means and fluid are all considered to be claimed elements (in both claims 1 and 14) as per the language in the last three lines of the claims. In regard to claim 2, an "applicator tip" is affixed to the open end of the housing 12" (the flat outer surface of neck 18" defines an "applicator tip"). In regard to claim 3, the open end of the housing 12" (the opening in the threaded neck) has a smaller inside diameter than the housing. In regard to claim 4, portion 30" of the opening means 24" defines an "elongated member" disposed "near" the sealed end of the housing. Further, element 76 defines an "elongated member" disposed "near" the sealed end.

Claims 10, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wirt. In regard to claim 10, Wirt discloses an enclosed opening means comprised of a tubular housing 14 having first and second sealed ends with a reduced outside

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diameter at the second sealed end 46 and a fracture line 50 near the second sealed end and a tube 13 having first and second open ends wherein the first open end encloses the second sealed end of the housing 14 such that it forms a "seal" around the second sealed end aft of the fracture line (viewing Figure 2, the portion of tube 13 that contacts housing 14 adjacent the fracture line 50 is considered to "form a seal" aft of the fracture line, i.e., a seal, at least to some degree, will be formed) wherein the tube 13 "affixes to the tubular housing" (as discussed supra, in as much as the Applicant has defined "affixes", the tube 13 is "affixed", at least to some degree, to the housing). In regard to claim 11, an applicator tip 16 is affixed to the second open end of the tube. In regard to claim 12, an elongated member 58 is disposed in the tubular housing.

### ***Allowable Subject Matter***

Claims 5-9 and 13 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 14-21 are allowed.

### ***Response to Arguments***

Applicant's arguments filed 8/3/05 have been fully considered but they are not persuasive. The Applicant contends that the Prussin and Wirt references are not applicable against the claims since the enclosed opening means of the instant invention does not move relative to the housing and is operated by bending the housing while the

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applied references do not operate in this manner. These features, however, have not been claimed. The only added limitation is that the enclosed opening means/tube is affixed to the housing. As discussed above, the enclosed opening means/tube of the applied references can be considered affixed to the housing.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
9/7/05